Case Nos. 86-1787 [redacted]

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1986

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L.L. BEAN, INC.,

Appellant,

-against-

DRAKE PUBLISHERS, INC., et al.,

Appellees.

—o—

On Appeal from the United States Court of Appeals for the First Circuit

—o—

BRIEF OF AMICUS CURIAE STATE OF MAINE IN SUPPORT OF APPELLANT L.L. BEAN, INC.

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Case Nos. 86-1202, 86-1203

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October Term, 1986

L.L. BEAN, INC.,

Appellant,

-against-

DRAKE PUBLISHERS, INC., et al.,

Appellees.

On Appeal from the United States Court of Appeals for the First Circuit

BRIEF OF AMICUS CURIAE STATE OF MAINE IN SUPPORT OF APPELLANT L.L. BEAN, INC.

Statement of Interest of Amicus Curiae

This brief is filed on behalf of the State of Maine as *amicus curiae* pursuant to Rule 36.4 of the Supreme Court

Rules, in support of the Jurisdictional Statement of Appellant L.L. Bean, Inc.

The isssues raised by this case are of great importance to the State of Maine. The Court of Appeals for the First Circuit held that Me. Rev. Stat. Ann. tit. 10, § 1530 (1981) which protects trademarks against dilution, as applied to the facts presented in this case, violates the First Amendment's guarantee of free speech. The statute in question is part of the State's program of economic regulation and is designed to protect property rights connected with trademarks. Because the First Circuit decision creates a sharp disagreement among federal appellate courts over the circumstances in which state trademark antidilution statutes may be constitutionally applied, the First Circuit's ruling is a matter of important concern to the State.

Moreover, the State of Maine has an interest in sustaining the constitutionality of the acts of its legislature. The effect of the First Circuit Court of Appeals decision is to place a restriction on the application of the Maine antidilution statute that may never have been intended or anticipated by the Maine Legislature. In addition, no Maine court has interpreted the Maine law to include the non-statutory exceptions created by the First Circuit decision. By construing a statute not yet interpreted by Maine courts, the decision upsets the balance between federal and state judiciaries in interpreting state legislation. Maine's strong interest in these matters prompts submission of this *amicus curiae* brief.

SUMMARY OF ARGUMENT

This Court should grant plenary consideration of the constitutional question raised by this appeal. Maine's trademark antidilution statute is a part of the state's general scheme of economic regulation, and Maine has an important interest in upholding the legislative protection given to trademark holders. Given the conflict among the federal Circuit Courts of Appeal on this issue, the decision of the Court of Appeals for the First Circuit should be reviewed to prevent further confusion regarding the circumstances in which state antidilution statutes may be constitutionally applied. Finally, relations between federal and state courts would be better served by permitting state courts, in the first instance, to construe and interpret the acts of their legislatures.

—o—

ARGUMENT

This case presents important issues concerning the appropriate relations between federal and state courts which should be resolved by the Supreme Court on plenary review. By passing on the constitutionality of the Maine trademark antidilution statute before any court of the State of Maine has had an opportunity to interpret it, the First Circuit preempted the right of Maine courts to interpret and construe state legislation.[1] Moreover, other circuits considering similar application of state trademark

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[1] As Chief Judge Campbell of the First Circuit Court of Appeals pointed out in his dissenting opinion in this case, the statute has never been construed by a court of the State of Maine.

antidilution statutes have reached a different conclusion than the First Circuit here. Full Supreme Court review should be granted to address these issues.

A. Maine has an important interest in upholding its trademark antidilution statute as part of its regulation of businesses and protection of property rights.

Maine is one of twenty-two states which have enacted a trademark antidilution statute as a means of serving a discrete end in a broad scheme of economic regulation. Maine's antidilution statute works in concert with federal trademark law by filling a void left by the federal legislation commonly known as the Lanham Act, 15 U.S.C. §§1051-1127 (1976). The Maine statute confers a cause of action on the owner of a trademark for injury which may result from the abuse of its trademark even in the absence of competition between the abuser and the mark's owner and even under circumstances where there is no likelihood of confusion. These are elements which are required before a trademark owner can avail itself of the procedural and remedial provisions of the federal law.

Consistent with the traditional view of trademarks as property, the antidilution statute reflects the judgment of the Maine Legislature that a company's trademark, the very embodiment of the company itself, is worthy of the State's protection. The State law protects a mark from suffering damage to its unique and distinctive qualities and valued associations even where such damage is not the result of consumer confusion. The current case presents an excellent example of a situation where the Maine antidilution statute fills a void left by federal trademark law. Here an unauthorized non-competing party ex-

ploited an owner's trademark by exposing it to obscene associations. The Maine statute demonstrates a legislative recognition of the business importance of a company retaining exclusive control over the use of its trademarks because of that company's economic interest in fostering only those trademark associations it has chosen and in maintaining the integrity of trademark associations in which it has invested.

The State of Maine has an inherent interest in the outcome of any litigation concerning the constitutionality of a statute its legislature has seen fit to enact. That interest is especially keen here, where the statute in question serves a precise and well-tailored purpose in the broad scheme of the State's system of economic regulation. Permitting the First Circuit opinion to stand would undermine the legitimate interests of the State of Maine both in this specific legislation and in the broader economic interests such legislation serves.

B. Review of this case will resolve inconsistencies among the circuits and protect the balance between the federal and state judiciaries.

In *Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema, Ltd.*, 604 F.2d 200, 206 (2d Cir. 1979), the United States Court of Appeals for the Second Circuit examined a trademark antidilution statute that is virtually identical to the Maine statute and reached precisely the opposite result. It upheld the trademark antidilution statute against First Amendment attack. The Court of Appeals for the Fifth and Eighth Circuits concur. *See Mutual of Omaha Insurance Co. v. Novak*, 775 F.2d 247, 249 (8th Cir. 1985); *Chemical Corp. of America v. Anheuser-Busch, Inc.*, 306

F.2d 433 (5th Cir. 1962), *cert. den.*, 372 U.S. 965 (1963). Should the opinion of the Court of Appeals for the First Circuit in this case stand, Maine corporations will be afforded substantially less protection than is given corporations doing business in the Second, Fifth, and Eighth Circuits. The conflict among the Circuits on this issue is itself sufficient ground for this Court to grant review.

Finally, state courts, like their federal counterparts, are entrusted with the interpretation of legislative enactments and the balancing of federal constitutional rights. Where a state statute is challenged on federal constitutional grounds, federal/state relations are undermined if a state court is not provided the opportunity to first examine and construe legislation passed by its own state legislature. Maine courts should have the opportunity to construe this statute before it is so severely limited by the federal judiciary.

CONCLUSION

For the foregoing reasons, plenary review should be granted.

Dated this 8th day of June, 1987.

Respectfully submitted,

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